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Supreme Court of the United States

OCTOBER TERM 1963

No. [redacted] 161

ALBERT SCOLNICK and CELIA SCOLNICK,

Petitioners,

against

LOUIS J. LEFKOWITZ and ISIDORE SIEGEL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

Petitioners, claiming a conspiracy to have them committed to the Psychiatric Wards of Bellevue Hospital of the City of New York, instituted an action for damages in the sum of $3,000,000 against Attorney General Louis J. Lefkowitz and a like sum from Assistant Attorney General Isidore Siegel.

Prior to answer, the defendants moved to dismiss the complaint upon the grounds that it failed to state a claim upon which relief should be granted and that they were immune from civil suit.

The District Court granted the motion in part, dismissing those portions of the complaint respecting the refusal of the Attorney General's office to investigate petitioners' charges of threats to their lives and improprieties concerning real estate operations in Staten Island. The Court, however, denied respondents' motion to dismiss the con-

spiracy count of the complaint. Reported 219 Fed. Supp. 836.

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Following the service of their answer, respondents Lefkowitz and Siegel moved for summary judgment pursuant to Federal Rules of Civil Procedure, Rule 56, and for an order of protection staying the taking of their deposition pursuant to Rule 30-b. On November 19, 1963, in a memorandum decision, District Court Judge Thomas Murphy granted respondents' motion for summary judgment.

Petitioners appealed to the United States Court of Appeals for the Second Circuit from that order and from that portion of Judge Metzner's order dismissing the complaint with respect to any alleged violation by respondents Lefkowitz and Siegel pursuant to the Fourth, Sixth and Fourteenth Amendments of the Federal Constitution. The orders appealed from were affirmed.

Petitioners base their action against the Attorney General of the State of New York and an Assistant Attorney General upon these undisputed facts:

In February, 1962, petitioner Celia Scolnick sent a three page telegram to the office of the Attorney General complaining about a conspiracy among real estate brokers in Staten Island, public officials, attorneys and bank officials. A confidential investigator attached to the Attorney General's office subsequently interviewed petitioner who refused to document her complaint. The office of the Attorney General thereupon determined not to further investigate.

Subsequently, on March 9, 1962, petitioners, accompanied by a New York City Patrolman, presented themselves at the office of the Department of Law of the State of New York, 80 Centre Street, in New York City. They were ushered into the office of the Superintendent of the building (on the main floor) where a telephone call was made,

on their behalf, to the office of the Attorney General. Miss Helene Manne, the personal secretary to the Attorney General, in response thereto, came to the Superintendent's office and advised the petitioners that the Attorney General was not in the building. To placate petitioners and to avoid any additional disturbance in the office of the Superintendent, Miss Manne telephoned Assistant Attorney General Isidore Siegel requesting assistance. Miss Manne and Mr. Siegel persuaded petitioners to continue the conversation in Mr. Siegel's office.

Petitioners spent several hours (from 3 p.m. until 7 p.m.) with Mr. Siegel in which they set forth all of their past history and their personal problems. They informed Mr. Siegel that gangsters, the Mafia, public officials, attorneys, bank officials, real estate brokers and persons unknown to them were conspiring against them and threatening physical harm. They refused to leave the Attorney General's offices without police protection. Mr. Siegel thereupon telephoned the New York City Police for assistance. Detectives attached to the New York City Police Department persuaded the petitioners to accompany them to the local police precinct. The office of the Attorney General considered the matter ended at that time.

District Judge Metzner in his opinion disposed of petitioners' contentions of the applicability of the Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States. He held:

> "No action lies against these defendants under either the Fourth or the Sixth Amendments to the Constitution of the United States for the same reason that no action predicated on these amendments lies against the City of New York [There is absence of diversity of citizenship between the plaintiffs and the City], and for the additional reason that the prohibitions of these amendments do not apply to individual conduct. *Bell* v. *Hood,* 71 F. Supp. 813, supra. No

action will lie against them individually predicated on the Fourteenth Amendment, since the provisions of that amendment are directed to actions by a state as the law now stands. *The Civil Rights cases,* 109 U. S. 3 (1883); see *Fisher* v. *City of New York* [312 F. 2d 890 (2nd Cir., 1963), cert. den. 31 U.S.L. Week 3416 (U. S. June 17, 1963) (No. 895)] supra. Insofar as those claims are predicated on violations of the New York State Constitution there is a lack of diversity of jurisdiction."

As previously stated the conspiracy count was permitted to stand.

Thereafter District Judge Murphy dismissed the remaining conspiracy count of the complaint on affidavits that irrefutably demonstrated that this alleged conspiracy was merely a figment of petitioners' imagination. The Attorney General, unequivocally and categorically, stated that *until the commencement of the action he was not even aware of the existence* of the petitioners, that he never spoke with the respondent Assistant Attorney General Siegel or anyone else concerning the actions or claims of the appellants. To compel the Attorney General of the State of New York to submit to a trial of the issue of conspiracy would be a travesty of justice in this case.

District Judge Murphy in his opinion stated:

"The affidavits of Attorney General Lefkowitz and Siegel submitted in support of this motion unequivocally demonstrate that they were not in contact with each other nor did they talk with each other about the plaintiffs or either of them and plaintiffs have offered no facts controverting this issue as they must do under Rule 56-a. No longer is it permissible to rely on the mere allegations of the complaint.

This disposition makes moot defendants' alternate motion for a protective order under Rule 30-b with reference to both dispositions and subpoenas.

This is an order. No settlement is necessary."

On appeal the Circuit Court in a per curiam opinion affirmed. The opinion appears in the appendix of petitioners' brief submitted to this Court (A-2). Reported 329 F. 2d 716.

Petitioners' zeal in seeking redress for some alleged wrongdoings is to be commended. Unfortunately their misguided attempts in this case are not based on fact but are wholly imaginable. The decisions of the District Court and of the Circuit Court completely answer petitioners' legal contentions requiring no further amplification by respondents. There are no legal questions requiring consideration by this Court.

The respondents herein are not responsible for petitioners alleged past and present problems and should not be unduly harassed when their total lack of involvement is obvious.

CONCLUSION

The petition for certiorari should be denied.

Dated: New York, N. Y., July 6, 1964

Respectfully submitted,

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